

TITLE 327 WATER POLLUTION CONTROL BOARD

#06-280(WPCB)

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from October 25, 2006, through November 24, 2006, on IDEM's draft rule language. IDEM received comments from the following parties:

Duke Energy (Duke)
Indiana Chamber of Commerce (Chamber)

The comments from the Indiana Chamber of Commerce were submitted after the end of the comment period.

Following is a summary of the comments received and IDEM's responses thereto.

Comment: Adopting the arsenic maximum contaminant level (MCL) as a ground water standard imposes a more stringent restrictions than under federal law because there are no federal ground water quality standards. (Duke, Chamber)

Response: There are no federal ground water quality standards, however, the Indiana legislature at IC 13-18-17-5(a)(3) specified that the [Water Pollution Control] Board shall adopt standards: "To establish health protection goals for untreated water in water supply wells." On August 8, 2001, the Board finally adopted 327 IAC 2-11, the ground water quality standards (GWQS), which, among other things, establish health protection goals for untreated water in water supply wells. The GWQS were developed with extensive workgroup participation and, through the workgroup process, IDEM determined to utilize the USEPA maximum contaminant levels (MCLs) as the numeric criteria for drinking water class ground water. USEPA has established the MCLs for arsenic and other constituents for water supplied by public water supplies to consumers. As IDEM does not have the appropriate resources to establish state-specific health protective numeric criteria for drinking water class ground water and because USEPA establishes the MCLs to be health protective for consumers of drinking water, IDEM continues to believe the MCLs are the appropriate numeric criteria for drinking water class ground water. Therefore, to adequately and equitably protect Indiana citizens who consume untreated water from water supply wells, IDEM believes it is important to adopt the USEPA's revised MCL for arsenic as the numeric criterion for arsenic for drinking water class ground water. In accordance with 327 IAC 2-11-2, the ground water quality standards are applied to facilities, practices and activities only through separate rule makings by the appropriate Board and/or Agency. It is during these subsequent rule makings where the issue of "more stringent restrictions" should be discussed in the context of the facilities, practices and activities under consideration in the rule making. Adopting the arsenic MCL does not impose a more stringent restriction on any facilities, practices and activities.

Comment: The IDEM needs to confirm that it is not operating under the assumption that it must adopt the SDWA MCL for arsenic in the ground water standards and that they have information/studies/data that this standard is necessary. (Duke)

Response: IDEM is not operating under the assumption that it must adopt the SDWA MCL. However, as noted above and pursuant to IC 13-18-17-5(a)(3), IDEM believes that adopting the arsenic MCL is appropriate to protect Indiana citizens drinking untreated water from wells. IDEM relied on EPA's information/studies/data in establishing the arsenic MCL. The board is revising the numeric criteria for arsenic in order to provide health protection for untreated water in water supply wells, an action required by the legislature.

Comment: IDEM's statement that this new rule does not have any potential fiscal impact may be incorrect. (Duke, Chamber)

Response: IDEM believes there should be no additional fiscal impact to regulated entities based on revising this numeric criterion because the GWQSs are not applied to regulated facilities, practices and activities until such time as a Board and/or Agency adopts rules, separately, to apply the standards. It is during those subsequent rule makings that questions relating to the fiscal impact on facilities, practices and activities can and should be addressed.

Comment: It should be acknowledged that the use of the arsenic 10 ppb MCL is inappropriate in programs not related to the drinking water class criteria. (Duke, Chamber)

Response: Unless defined as impaired drinking water or limited class under 327 IAC 2-11-4, all ground water in the state is drinking water class. As drinking water class, it is appropriate to expect that untreated water in water supply wells should meet the drinking water standards. To address remediation activities, IAC 2-11-2(d) allows for ground water remediation activities consistent with IC 13-25-5-8.5. Additionally, the subsequent rule makings necessary to apply the ground water standards to facilities, practices and activities should address how and where the standards apply relative to regulated facilities, practices and activities.

Comment: IDEM should form a work group to examine this important issue. (Chamber)

Response: On July 13, 2007, IDEM with stakeholders including the Chamber and representatives from Duke Energy to discuss the concerns raised in their comments. On August 20, 2007, IDEM followed up with these stakeholders to determine whether additional meetings were necessary. IDEM is not planning to form a work group to examine this issue.